

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

JOSEPH ALSTON, #321826,

Petitioner,

v.

ACTION NO. 2:06cv277

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on April 11, 2003, in the Circuit Court of the City of Norfolk, Virginia, for capital murder, attempted robbery and use of a firearm in the commission of a felony (two counts). Petitioner was sentenced to life imprisonment plus ten (10) years.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on January 11, 2007, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and

recommendations made by the Magistrate Judge. On January 25, 2007, the Court received Petitioner's Motion to Object. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report, and having made de novo findings with respect to the portions objected to,¹ does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on January 11, 2007, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE as Petitioner's claims are barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules

¹The Court notes that in his objections Alston has attempted to argue the merits of his ineffective-assistance-of-counsel claims, yet those claims were never addressed on the merits in the Magistrate Judge's Report and Recommendation because Alston's petition was time-barred. Indeed, in making his objections, Alston has failed to establish any grounds for upsetting the Magistrate Judge's finding that the instant federal habeas petition is barred by the AEDPA's one-year statute of limitations.

of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

/s/ Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

February 23, 2007